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Held at the Palais des Nations, Geneva,
on Wednesday, 20 November 1991, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Additional report of Cameroon

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.101/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Additional report of Cameroon (CAT/C/5/Add.26)

1. At the invitation of the Chairman, Mr. Assira Engoute, Mrs. Ngwanmessi and Mr. Sob (Cameroon) took places at the Committee table.

2. Mr. ASSIRA ENGOUTE (Cameroon), introducing his country's additional report (CAT/C/5/Add.26), said that Cameroon had acceded to independence in 1960. It had 10 provinces, of which 2 were English speaking and 8 French speaking. Geographically, it was located in central Africa and consisted of equatorial forest and savannah. It produced and exported cocoa, coffee, bananas and wood. The population of nearly 12 million was made up of some 210 tribes and the main religions were Christianity, Islam and animism. The country was one of great historical, geographical, sociological, linguistic, economic and political diversity and it had recently been going through a process of far-reaching democratic change.

3. Cameroon had ratified the Convention against Torture in June 1987, without reservations, and was also a party to other human rights instruments, as stated in paragraph 7 of the additional report. According to article 2 of the Penal Code, referred to in paragraph 8 of the report, treaties and agreements which had been duly ratified by Cameroon prevailed over any provision of the criminal law as soon as they had been promulgated, so that there was no need to incorporate them into domestic law before they could be applied. Cameroonian law was the result of constant efforts to combine the English and French systems inherited from the colonial past with traditional values. The main legislative instruments were listed in paragraph 3 of the report. In the past year, considerable changes had taken place and work was therefore being carried out to bring the country's legislation into line with the deep-seated aspirations of the Cameroonian people.

4. Judicial organization, as described in paragraph 14 of the report, was based on a system of traditional courts, courts of first instance, courts of major jurisdiction and military courts. Courts of first instance were competent in penal matters to try all offences except serious crimes, while courts of major jurisdiction tried crimes and related offences and entertained applications for immediate release presented by a prisoner or detainee or on his behalf, where such applications were based on an alleged procedural flaw or amounted to a plea of wrongful imprisonment. Military courts had jurisdiction to try persons over the age of 18 for the offences referred to in paragraph 16 of the report. Since 1990, a number of offences had been removed from the jurisdiction of the military courts either because they were no longer offences or because they were to be tried by ordinary courts. Traditional courts were competent primarily in civil matters and defendants had to agree that cases should be tried by them; otherwise, the ordinary courts had jurisdiction. In all, there were 49 courts of major jurisdiction and some 150 courts of first instance.

5. There was a court of appeal in each province which heard appeals against decisions taken by lower courts. In addition, the Court of National Security had jurisdiction to try crimes against State security and related offences, while the Supreme Court monitored the constitutionality of the laws and their enforcement by the lower courts. The judiciary was an authority in its own right and its independence was guaranteed by the President, who had the power to appoint, transfer and punish judges, with the advice and assistance of the Supreme Judicial Council.

6. With regard to the prevention of torture, the report recognized that, although torture was not explicitly defined in the Penal Code, there was a broad definition of "officials" and "violence" and most types of behaviour constituting acts of torture were therefore covered by the Penal Code. It was, however, concerned more with physical violence and its sequelae than with mental and psychological suffering and his delegation would therefore suggest to the Cameroonian authorities that the necessary amendments should be made. Under article 83 of the Penal Code, moreover, an order from a superior officer or public authority could not be invoked as justification of torture, as stated in paragraphs 28 and 29 of the report.

7. The period of custody of suspects was limited to 24 hours and could be extended only by the Public Prosecutor for a further, limited period, so that the maximum duration was 4 days. The Public Prosecutor was also responsible for monitoring places of detention. During the period of custody, a suspect could contact his family, have access to legal counsel and undergo a medical examination. When charges had been brought, the accused could choose a defence counsel and was not required to make any statement in the counsel's absence. He could be held incommunicado for a period of not more than 10 days, which could be renewed for a further 10 days; he was entitled to have contact with a lawyer during that period.

8. The rules of evidence were based on the principle of the innermost conviction of the judge, who assessed the probative value of evidence and could therefore reject any confession which had been obtained through torture.

9. The training of professionals in relation to torture had not yet been introduced in his country. However, his delegation would draw the attention of his Government to the desirability of such educational measures.

10. In conclusion, he indicated that his delegation intended to ensure that the next report contained an account of the effect on legislation and government structures of the changes now taking place in the country.

11. Ms. CHANET (Country Rapporteur) thanked the Cameroonian delegation for its reports and noted that the additional report (CAT/C/5/Add.26) was to be considered in the light of the initial report (CAT/C/5/Add.16) and the questions by the members of the Committee which had not yet been answered.

12. Although the additional report and the oral introduction contained some supplementary information, she would welcome further details on the independence of the judiciary, the guarantees of such independence and the powers, functions and term of office of members of the Supreme

Judicial Council. Further information on the Court of National Security would also be helpful including details of its composition, jurisdiction and procedure. It would also be interesting for the members of the Committee to know what progress towards liberalization the establishment of such a court represented. With regard to military courts, she requested further information on the scope of the recent amendments that had been made. What offences were still within the jurisdiction of those courts and were there cases where civilians still appeared before them?

13. The report referred to the maximum period of custody of a suspect, but did not mention administrative detention. Following the events which had occurred in Cameroon in 1984, it had none the less been reported that a number of persons had been detained and subsequently released in 1991 without having been charged or brought before a court. There had also been reports that some 60 persons were still being detained under such circumstances and she therefore requested information on that situation and on the legal basis for such detention. Were such persons entitled to habeas corpus?

14. In view of the questions put by members of the Committee at the Committee's third session in 1989, information confirming or refuting reports of the ill-treatment of prisoners would be appreciated. There had also been reports that students involved in the student demonstrations in Yaoundé in May 1990 and April 1991 had been detained for 24 hours immediately following the demonstrations and subjected to ill-treatment. In addition, it had been reported that some 15 prisoners of conscience had been detained in September 1991 and that some of them had been hospitalized following their detention. Could the delegation provide information on that matter?

15. From section I of the report entitled "General information", she noted that there had been no change in the Constitution, in that it still contained no specific ban on torture. It was stated in paragraphs 8 and 9 that treaties ratified by Cameroon took effect as soon as they were promulgated and there was thus no need to incorporate the provisions of such treaties into domestic law: the Penal Code, the Civil Code and other codes already existing in Cameroon were considered to provide sufficient guarantees against the use of torture. Although it was true that the existence of a body of general legislation was essential if human rights were to be guaranteed, general legislation was not a universal panacea and was no substitute for specific measures incorporating the provisions of the Convention into domestic law. It was up to the State party to take such measures and it could not resort to excuses such as those given in paragraph 13, namely, limited budgetary resources or limited professional awareness among staff. If such limitations existed, it was the State's responsibility to remedy them.

16. Paragraph 68 stated that tuition was given to police officials and prison staff on the rules governing the performance of their duties and the representative of Cameroon had said that his Government's attention would be drawn to the need to develop training programmes. It was not enough merely to draw the Government's attention to that need: had any actual steps yet been taken to organize programmes that would provide instruction in human rights? Was any kind of training, even of the most elementary kind, provided for police and prison officers in that regard?

17. The representative of Cameroon had admitted that there was a deficiency in his country's legislation with regard to articles 1 and 4 of the Convention, since it contained no specific definition of torture: torture was deemed to be covered by offences against the person which were punishable under the Penal Code. She pointed out that offences against the person were punishable in every country in the world. It was essential to make torture, as defined in the Convention, a specific offence and she hoped that that would be done under the new Penal Code that was now being drafted. After all, an act of torture need not necessarily amount to murder, or result in any visible bodily harm.

18. With regard to article 2, paragraph 1, of the Convention, the representative had stated that certain reforms had been introduced concerning detention in custody and that a medical examination was now required; it was thus to be assumed that there was currently no such medical examination. Was it the intention under the new Code to make provision for access to a lawyer, to regulate the periods between interrogations and to require that the duration of interrogations should be recorded in a register? Were medical examinations to be carried out by an independent physician and what was the period within which a detained person should be brought before a judge? Would detained persons have to appear in court to have their periods of custody extended or could orders for such extensions simply be made by telephone?

19. It had been stated that detention incommunicado could be ordered for a period of 10 days, renewable for a further 10: that seemed an excessively long period. Was any form of contact permitted during those 20 days? It was stated in paragraph 23 that persons carrying out arrests were prohibited from using force except when defending themselves against assault. She would like to know what was meant by defence against assault and whether the principle of proportionality applied.

20. According to paragraph 25, the Code of Criminal Procedure obliged the Public Prosecutor to make visits to persons held in police custody. Was there also an obligation to visit prison cells? She was somewhat puzzled as to why such visits should depend on "changing mentalities" and the "degree of conscientiousness" of the officials concerned, if article 9 of the Code of Criminal Procedure made it an absolute obligation for the Public Prosecutor to carry them out.

21. With regard to article 2, paragraph 2, of the Convention, paragraph 27 of the report stated that a state of emergency might be proclaimed by presidential decree. Was such a decree issued after consulting Parliament and the judiciary and did Parliament continue to sit throughout a state of emergency? The same paragraph stated that persons could be held in police custody for 7 days when the order was issued by a prefect and 15 days when the order was issued by a governor. However, no reference was made to the fact that, under article 6 of the relevant Act, custody could be ordered by a minister for two months and extended for a further two, making four months in all. What guarantees were provided for persons held for such long periods? It was further stated that persons could be held in custody "in any premises": did that mean even in private houses? She would welcome clarification of those points.

22. Where article 3 was concerned, paragraph 33 of the report stated that Cameroon, as a party to the 1951 Convention relating to the Status of Refugees, complied with the requirement that no refugee should be returned to countries where his life or freedom would be threatened on account of race, religion or nationality or on other grounds. While that provision was most useful, it was not sufficient to meet the Committee's concerns about torture. A person could risk torture on return to his country even when his life or freedom were not threatened for any of the reasons listed in the 1951 Convention.

23. Paragraph 34 stated that, under Cameroonian law, foreigners who did not meet the conditions for entry into Cameroon remained the responsibility of the transporter and claimed that the relevant decree did not contravene the provisions of article 3, paragraph 1, of the Convention. However, if, for example, the transporter returned the person concerned to a country where torture was practised, either his own country or the country of destination of the transporter, there would indeed be a contravention. Shifting the burden of responsibility onto the transporter did not relieve Cameroon of its responsibilities under article 3. It was further stated in paragraph 35 that the same considerations applied to the return of illegal aliens and that such aliens were "free to choose" their destination. In fact, persons returned or expelled were rarely given a choice of destination, and she would be glad to hear of specific instances.

24. The rules governing extradition as set out in paragraph 36 of the report did not in themselves provide any guarantee against torture. Extradition was ordered by decree of the President of the Republic and it was clear that, if the court of appeal upheld such an order, the Government would have a free hand. Would such a decree take account of the requirements of article 3 of the Convention?

25. Paragraph 55 stated that the courts of Cameroon were competent to try acts of torture, even if they had been perpetrated abroad by a foreign national, and gave as examples the offences of traffic in persons and the slave trade. Was there any specific provision in the Penal Code which included torture among offences committed abroad that were covered by Cameroonian law? Obviously, traffic in persons and the slave trade could not be considered as <u>ipso facto</u> covering acts of torture.

26. In connection with article 11 of the Convention, she would appreciate further information about the "Commission on Prison Supervision" referred to in paragraph 70. What was meant by the statement that the activity of that Commission was "not always apparent"? It was up to the authorities responsible for setting up the Commission to ensure it did its work and to see to it that reports were compiled on prison visits. As country rapporteur, she had been informed that many prisoners had been given inadequate care and that some had died of malnutrition. Some of the prisoners released in 1991 had been severely disabled and a number had been either deaf or blind. In the prison of Nkondengui in Yaoundé, two persons had apparently died in November 1989. In the light of those events, it was somewhat strange that the Commission's activity should be described as "not always apparent". It should be the task of that same Commission to bring the situation to the attention of the authorities, so that it could be remedied.

27. Paragraph 71 stated that, when an act of torture was suspected, an inquiry was immediately opened. What was the procedure when such an act had been perpetrated by the police? Did the police themselves conduct the inquiry and, if so, how was the impartiality required under article 12 of the Convention ensured? Could the Committee be given some details on how such inquiries were carried out? With reference to paragraph 74, she would like to know how many complaints of torture had been received and investigated and how many sentences had been handed down.

28. In connection with article 14 of the Convention, paragraph 12 stated that at present no programme for rehabilitating victims of torture existed in Cameroon. Did the Government intend to set up such a programme? How many successful actions for compensation had been brought and what was the average amount of compensation offered? Regarding article 15, she would like to know whether there was any specific provision in the legislation of Cameroon to the effect that no statement established to have been made as a result of torture could be invoked as evidence in court.

29. Paragraph 84 stated, in relation to article 16, that, under the Code of Criminal Investigation, the use of force in the process of arrest, detention or execution of a sentence was a crime. What was in fact the penalty for that crime and how was the "use of force" defined? Without such a definition, the provision of the Code referred to was likely to remain merely a pious hope. It was again claimed that the ordinary Penal Code was adequate to cover such offences, but she found it difficult to see how the mere use of force could be characterized as a crime. She would appreciate clarification as to how that provision was interpreted and applied in Cameroon.

30. The CHAIRMAN, speaking as alternate country rapporteur, said the report of Cameroon was clearly presented and much fuller than the one previously submitted, even if it did not reply to all the questions that had been asked by the members of the Committee. However, he had been unable to find in the report any specific prohibition of the use of torture by officials, such as members of the judiciary, the police, prison staff or members of the armed forces.

31. With regard to article 2, paragraph 1, of the Convention, paragraph 24 stated that the law of Cameroon required that the general aspect of the individual at the time of detention, and the general state of health of the detainee at the time of his release, should be noted. Was that done by means of a medical examination? In relation to article 2, paragraph 3, he had noted with interest the statement in paragraph 31 that officials were required to obey orders only when they were lawful, which did indeed seem to be in conformity with the Convention, although torture was not referred to. However, paragraph 32 indicated that no action could be taken against an official for acts carried out on orders from a superior. If such an order violated the requirements of the Convention, should the official then refuse to obey it?

32. Ms. Chanet had drawn attention to deficiencies in the law of Cameroon regarding compliance with article 3 of the Convention. Might those deficiencies be remedied by the fact that article 3 was directly applicable in Cameroon? Some clarification would be helpful; for example, it would perhaps be difficult for officials responsible for taking decisions on refoulement or extradition to apply the provisions of an international convention as well as their own national laws.

33. Concerning article 6, paragraphs 1 and 2, paragraph 57 of the report stated that the law weighed the need for swift and effective prosecution against the requirements of personal freedom. That might not be consistent with article 6, paragraph 1, which stated that custody could be continued only for such time as was necessary to enable criminal extradition proceedings to be instituted. Paragraph 58 of the report pointed out that there was nothing to prevent a foreigner threatened with extradition from communicating with the State of which he was a national, at least through a lawyer, but that statement seemed too vague to constitute a guarantee: in fact, article 6, paragraph 3, of the Convention required that such a person should be assisted immediately in making such a communication. The same comment would apply to what was stated in paragraph 59 in relation to the application of article 6, paragraph 4.

34. Paragraph 65 of the report stated merely that it was to be "surmised" that the provisions of the Convention prevailed over the law of Cameroon in respect of extradition for the offence of torture, whereas, in fact, under article 8, paragraph 3, the State party was obliged to make such offences extraditable. Paragraph 68 of the report stated that police and prison officials were given suitable tuition on the rules governing performance of their duties, but, since, as he had already pointed out, there did not seem to be any specific prohibition of torture in the legislation of Cameroon, it was difficult to see on what basis such tuition could be given. There would seem to be room for improvement where training was concerned and he suggested that Cameroon should seek assistance from the Centre for Human Rights in that connection.

35. With reference to article 11 of the Convention and paragraph 69 of the report, he asked whether there were any regulations covering the prosecutor's periodic visits to police stations without notice in the framework of the control of custody. In his opinion, the Centre for Human Rights could help to improve the system for the control of custody.

36. Where paragraph 73 was concerned, he had found that there was a defect in the Cameroonian system, since solidarity between the police and the gendarmerie could stand in the way of the reporting and punishment of acts of torture. That was not a satisfactory situation, particularly as paragraph 25 of the report referred to the "conscientiousness" of law enforcement officials. It was essential to strengthen training and information and the efficient monitoring of police and gendarmerie premises.

37. Referring to article 14 of the Convention and paragraphs 81 and 82 of the report, he noted that government liability was not mentioned and wondered how government officials could be taken to court in civil actions for damages without implicating the State.

38. He had studied the documents received from Amnesty International, which contained so many allegations and details that they might be thought to be true. He would like the opinion of the representative of Cameroon on the facts contained in those documents and wished to know what legal investigations had been conducted and what compensation had been awarded.

39. He also asked when the state of emergency had been declared in Cameroon, for what part of the territory, for how long and what the current situation was in that regard.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

40. Mr. SORENSEN, referring to paragraph 27 of the report, said that he agreed with all the questions that had been asked on the state of emergency, but would like further clarification as to whether the fact that a person was not held incommunicado when in police custody was also valid under the state of emergency. Persons in police custody had certain rights, but he wished to know whether those rights were also respected when a person was in the custody of persons other than the police. Similarly, when held in premises other than police premises, could a person be held incommunicado?

41. With regard to paragraph 68 of the report, he said that, although the 1960 and 1973 Decrees could not have taken account of a convention which had entered into force only in 1984, he wondered whether they expressly recommended education and information regarding the prohibition against torture. It was worth noting that the last sentence of paragraph 68 implied that the practice of the medical profession required knowledge of torture.

42. Referring to paragraph 70, he said that Cameroon had adopted the legal remedies available in France and the United Kingdom, where Her Majesty's Prison Inspectorate published annual reports. He asked whether the Cameroonian Commission on Prison Supervision did the same. If so, the Committee would welcome a copy of the reports. According to the information received from non-governmental organizations, the prison inspection system was not adequate, since ill-treatment of prisoners continued. He asked how the Government of Cameroon intended to change the system.

43. With regard to paragraphs 81 and 82, he agreed with the views expressed by Ms. Chanet and the Chairman and pointed out that the United Nations had a technical assistance unit which could help Cameroon to set up rehabilitation centres.

44. Mr. BURNS, referring to the comment by the representative of Cameroon on the holding of a person in custody without charge, asked whether it was true that the police could hold a person for a maximum period of 24 hours, which could be extended to up to 4 days with the approval of the prosecutor and

during which he was not held incommunicado and had access to his doctor, lawyer and family, and whether that was also the case under a state of emergency. The judicial authority could hold a suspect for up to 10 days, renewable for a further 10 days, up to a period of 2 months. Were those periods cumulative and was it the case throughout that a person could be held incommunicado?

45. With reference to article 15, he had understood the representative of Cameroon to say that judges were entitled to reject statements obtained under torture; in fact, they must reject such statements.

46. He asked the representative of Cameroon to accept or rebut the claim by Amnesty International that no cases of allegations of torture had been the subject of an official inquiry in Cameroon. Had allegations of torture been inquired into, had they been made public and what had the results of the inquiries been? Amnesty International had also maintained that the authorities had blocked civil actions for damages filed before the courts and that some persons had not been granted court hearings despite their complaints; it would be an alarming result if a person claiming to have been ill-treated were denied access to the courts to establish what compensation he should receive. He also asked about the doctrine of State responsibility: was the victim's only recourse against State agents and how many State agents had been disciplined or prosecuted over the last two years? Statistical data would be helpful.

47. Mr. KHITRIN welcomed the serious approach taken by the delegation of Cameroon in submitting its additional report to the Committee.

48. He wished to know whether there had been cases where action by the Government had influenced the Supreme Court or local courts in taking decisions in which the Government had an interest and, if so, whether examples could be given. Cameroonian legislation indicated that criminal responsibility was incurred by the practice of the slave trade; he asked whether there had been any documented cases and whether they had been punished.

49. Mr. MIKHAILOV said that the additional report was an improvement on the one submitted in 1989. Amnesty International had also found that progress towards democratization had been made in respect of political prisoners and legislation. He wished to know how Cameroon elected its President in accordance with the Constitution, whether a parliamentary National Assembly existed and what the relationship was between the judiciary and the President of Cameroon.

50. Was the Convention against Torture directly applicable in Cameroon and did it take precedence over domestic legislation?

51. The classification of offences contained in paragraph 42 of the report was quite original and he asked whether special provisions existed in the Penal Code concerning torture and other forms of cruel treatment. He proposed that such provisions should be incorporated in Cameroon's domestic legislation.

52. Referring to paragraph 17 and the principle of dual jurisdiction which enabled parties to apply for a rehearing of all cases open to appeal, he asked why Cameroon did not use the three-tier system of courts. With regard to paragraph 12, he asked whether Cameroon had any intention of preparing a programme for the rehabilitation of victims of torture, since none currently existed.

53. Mr. GIL LAVEDRA said that the additional report of Cameroon was far better than the initial report.

The public meeting rose at 12.15 p.m.